

STATE OF MINNESOTA  
OFFICE OF ADMINISTRATIVE HEARINGS

FOR THE DEPARTMENT OF LABOR AND INDUSTRY

In the Matter of Jason Scott Moksnes,  
individually, and d/b/a JP's Home  
Finishing

**FINDINGS OF FACT,  
CONCLUSIONS, AND  
RECOMMENDATION**

The above-entitled matter came on for a prehearing conference before Administrative Law Judge Barbara L. Neilson on October 18, 2006, at 3:30 p.m. at the Office of Administrative Hearings in Minneapolis, Minnesota. Christopher M. Kaisershot, Assistant Attorney General, 445 Minnesota Street, Suite 1200, St. Paul, Minnesota 55101-2130, appeared on behalf of the Department of Labor and Industry ("the Department"). There was no appearance by or on behalf of the Respondent, Jason Scott Moksnes, individually, and doing business as JP's Home Finishing, 1122 Arthur Street, Wausau, WI 54403. The OAH record closed at the conclusion of the prehearing conference on October 18, 2006.

**STATEMENT OF ISSUES**

The issues presented in this case are whether the Respondent, Jason Scott Moksnes, individually and d/b/a JP's Home Finishing, advertised his availability for finishing work, represented to homeowners Jay and Kirsten Kocon in March of 2006 that he was a licensed residential building contractor, provided the Kocons with a nonexistent license number, cashed the Kocons' down payment check, never did any work for the Kocons, and never sent the Kocons a refund, and has thereby engaged in unlicensed residential building contractor or remodeler activities, performed in breach of contract, engaged in a fraudulent, deceptive, or dishonest practice, and displayed incompetence, untrustworthiness, or financial irresponsibility in violation of Minn. Stat. §§ 326.84, subds. 1 and 1b, and 326.91, subds. 1(2), (4), (5), and (6), and 4 (2004). If so, the further issue is whether the Respondent should be subject to discipline and/or a civil penalty pursuant to Minn. Stat. §§ 45.027, subd. 7, and 326.91, subd. 1 (2004).

Based upon all of the proceedings herein, the Administrative Law Judge makes the following:

**FINDINGS OF FACT**

The Notice of and Order for Hearing, Order for Prehearing Conference, and Statement of Charges ("Notice of Hearing") initiating this contested case proceeding was served on the Respondent Jason Scott Moksnes, individually, and d/b/a JP's Home Finishing, via first class mail on September 6, 2006, at the following address: Jason Scott Moksnes, JP's Home Finishing, 1122 Arthur Street, Wausau, WI 54403.<sup>1</sup>

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<sup>1</sup> Affidavit of Service by U.S. Mail of Ann Kirlin attached to Notice of Hearing.

The Notice of Hearing contained the following language:

Respondent's failure to appear at the hearing or prehearing conference may result in a finding that the Respondent is in default, that the Department's allegations contained in the Statement of Charges may be accepted as true, and that its proposed disciplinary action may be upheld.<sup>2</sup>

The Notice of Hearing set a prehearing conference for October 18, 2006, at 3:30 p.m.<sup>3</sup>

The Respondent did not file a notice of appearance in this matter, and no one appeared at the prehearing conference on October 18, 2006, on behalf of the Respondent. The Respondent did not make any request prior to the October 18, 2006, prehearing conference for a continuance or any other relief.

Because the Respondent failed to appear at the prehearing conference in this matter, he is in default.

Pursuant to Minn. Rules part 1400.6000 (2005), the allegations contained in the Notice of Hearing and Statement of Charges are hereby taken as true and incorporated into these Findings of Fact.

Based upon the foregoing Findings of Fact, the Administrative Law Judge makes the following:

### **CONCLUSIONS**

1. The Administrative Law Judge and the Commissioner of the Department of Labor and Industry have jurisdiction over this matter pursuant to Minn. Stat. §§ 14.50, 45.027, and 326.91 (2004).

2. The Notice of Hearing issued by the Department was proper and the Department has fulfilled all relevant substantive and procedural requirements of law and rule.

3. The Respondent, having made no appearance at the prehearing conference, and not requesting any continuance or relief, is in default. Pursuant to Minn. Rules part 1400.6000 (2005), the allegations contained in the Notice of Hearing and Statement of Charges are hereby taken as true.

4. By advertising his availability for finishing work, representing to homeowners Jay and Kirsten Kocon that he was a licensed residential building contractor, providing the Kocons with a nonexistent license number, cashing the Kocons' down payment check, failing to do any work for the Kocons, and failing to send the Kocons a refund, the Respondent has engaged in unlicensed residential building contractor or remodeler activities, performed in breach of contract, engaged in a fraudulent, deceptive, or dishonest practice, and displayed incompetence, untrustworthiness, or financial irresponsibility in violation of Minn. Stat. §§ 326.84, subds. 1 and 1b, and 326.91, subds. 1(2), (4), (5), and (6), and 4 (2004).

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<sup>2</sup> Notice of Hearing, p. 4.

<sup>3</sup> Notice of Hearing, p. 1.

5. The Respondent is subject to discipline and/or a civil penalty pursuant to Minn. Stat. §§ 45.027, subd. 7, and 326.91, subd. 1 (2004). The imposition of sanctions is in the public interest.

Based upon the foregoing Conclusions, the Administrative Law Judge makes the following:

### **RECOMMENDATION**

IT IS HEREBY RECOMMENDED that the Commissioner of Labor and Industry impose discipline and/or an appropriate civil penalty against the Respondent, Jason Scott Moksnes, individually, and d/b/a JP's Home Finishing.

Dated: November 16, 2006

s/Barbara L. Neilson

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BARBARA L. NEILSON  
Administrative Law Judge

Reported: Default.

### **NOTICE**

This Report is a recommendation, not a final decision. The Commissioner of Labor and Industry will make the final decision after a review of the record. The Commissioner may adopt, reject or modify the Findings of Fact, Conclusions, and Recommendations. Under Minn. Stat. § 14.61, the final decision of the Commissioner shall not be made until this Report has been made available to the parties to the proceeding for at least ten days. An opportunity must be afforded to each party adversely affected by this Report to file exceptions and present argument to the Commissioner. Parties should contact the Office of the Commissioner of Labor and Industry, 443 Lafayette Road, St. Paul, MN 55155, to ascertain the procedure for filing exceptions or presenting argument. Pursuant to Minn. Stat. § 14.62, subd. 1, the Agency is required to serve its final decision upon each party and the Administrative Law Judge by first-class mail or as otherwise provided by law.

If the Commissioner fails to issue a final decision within 90 days of the close of the record, this report will constitute the final agency decision under Minn. Stat. § 14.62, subd. 2a. The record closes upon the filing of exceptions to the report and the presentation of argument to the Commissioner, or upon the expiration of the deadline for doing so. The Commissioner must notify the parties and the Administrative Law Judge of the date on which the record closes.